



U.S. Department  
of Transportation

**Federal Aviation  
Administration**

JAN 14 2009

Eastern Region  
Regional Counsel  
Telephone: 718 553-3267  
Facsimile: (718) 995-5699

1 Aviation Plaza  
Jamaica, NY 11434

DEPT OF TRANSPORTATION  
FEDERAL AVIATION  
ADMINISTRATION

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Federal Aviation Administration  
800 Independence Avenue, S.W.  
Washington, D.C. 20591  
Attn: Hearing Docket Clerk, AGC-430  
Wilbur Wright Building - Room 2014

ATTN: HEARING DOCKET CLERK

CP09EA0001

Re: In the Matter of Brian Fronimos  
Docket No. 2008EA700174

2009-0031

Enclosed herein please find a copy of a request for hearing and the original and one copy of the FAA's Complaint in the above-entitled action for filing, together with proof of service upon the Respondent.

The FAA requests that the hearing in this matter be held in the Baltimore, MD area, and expects that the hearing will last one (1) day.

Please address all communications for the Federal Aviation Administration to the attention of Mary Madeline McCarthy, Office of the Regional Counsel, 1 Aviation Plaza Jamaica, NY 11434.

Sincerely,

Alfred R. Johnson, Jr.  
Regional Counsel

By: Mary Madeline McCarthy  
Mary Madeline McCarthy  
Attorney

Enclosures

cc: AEA-700

BB

Regional Counsel for the Eastern Region  
Federal Aviation Administration  
1 Aviation Plaza  
Jamaica, NY 11434

Date 12-29-08  
Brian Fronimos - 2008EA700174  
Subject: Final Notice of Proposed Civil Penalty  
Response Attachment

In reply to your Final Notice of Proposed Civil Penalty, I elect to proceed as indicated by my check mark beside the numbered paragraph below:

1. ☐ I hereby submit the amount of the proposed civil penalty with the understanding that an Order Assessing Civil Penalty will be issued in that amount.
2. ☒ I hereby request a formal hearing in accordance with Section 13.16 of the Federal Aviation Regulations.

By sending this form to the Federal Aviation Administration, Eastern Region, I also hereby certify that a copy of this form has been filed with the Hearing Docket Clerk (Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, S.W., Room 924A, Washington, DC 20591, Attention: Hearing Docket Clerk).

\*\* Please note that you will not be entitled to a hearing if you file this form with the Federal Aviation Administration, Eastern Region, WITHOUT having filed this form or a written request for a hearing with the HEARING DOCKET CLERK.

#### MY ATTORNEY/REPRESENTATIVE

Brian Fronimos  
Signature

Address: 18104 Oakview Ave NW #200  
Home Phone No. 202-728-5280 53689  
Business Phone No. 202-286-0140

Name: \_\_\_\_\_  
Firm: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone No. \_\_\_\_\_

#### PRIVACY ACT NOTICE

This notice is provided in accordance with Section (e)(3) of the Privacy Act, 5 U.S.C. §552a(e)(3), and concerns the information requested in the letter or form with which this Notice is enclosed.

- A. Authority. This information is solicited pursuant to 49 U.S.C. 1101 et seq., and regulations issued thereunder codified in Part 13 of Title 14 of the Code of Federal Regulations. Submission of the telephone number is voluntary. The request for information is intended to provide you with an opportunity to participate in the investigation.
- B. Principal Purpose. The requested information is intended to assist us in contacting you regarding this enforcement case.
- C. Routine Uses. Records from this system of records may be disclosed in accordance with the routine uses as they appear in System of Records No. DOT/FAA 847 as published from time to time in the Federal Register.
- D. Effect of Failure to Respond. If you do not provide the requested information, there may be delay in contacting you regarding this enforcement case.

MA

MA

Brian Fronimos

18104 Calico Ave

Nampa ID 83689

BOISE ID 837

31 DEC 2008 PM 3 T



Regional Counsel for The Eastern Region  
Federal Aviation Administration  
1 Aviation Plaza  
Jamaica NY 11434

11434+4303

11434+4303

U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
OFFICE OF HEARINGS  
WASHINGTON, D.C.

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In the Matter of Brian Fronimos

2008EA700174  
Judge Not Assigned

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COMPLAINT

The Federal Aviation Administration (FAA), by counsel, hereby files its Complaint, pursuant to Rule 208 of the Rules of Practice (14 C.F.R. 13.208), and states as follows:

I

Respondent, Brian Fronimos, was advised through a Final Notice of Proposed Civil Penalty that the FAA proposed to assess a civil penalty in the amount of \$2700. On January 5, 2009, Respondent submitted a written demand for a hearing.

II

1. On or about March 5, 2008, you were a passenger on Delta Air Lines (hereinafter "Delta") Flight #1802, departing Baltimore-Washington International Airport.
2. During a routine security screening of checked passenger baggage, the Transportation Security Administration (TSA) discovered an undeclared shipment of hazardous materials in your checked passenger baggage (hereinafter, the shipment), tendered to Delta under baggage tag #772937.
3. Specifically, the shipment comprised a toolbox containing four (4) compressed flammable liquid gas fuel cells in your checked passenger baggage.

4. The shipment is regulated by the Department of Transportation (DOT) Hazardous Materials Regulations (HMR), and is classified by the DOT HMR Hazardous Materials Table (49 C.F.R. § 172.101) as *Compressed gas, flammable, n.o.s., Class 2.1, UN1954, Forbidden on passenger aircraft*.
5. You tendered the shipment to Delta, but you did not describe the hazardous materials on shipping papers in the manner required by the DOT HMR.
6. You tendered the shipment to Delta, but you did not include the proper shipping name prescribed by the DOT HMR.
7. You tendered the shipment to Delta, but you did not include the identification number as prescribed in §172.101 for the material as shown in column 4 of the Table (49 C.F.R. 172.101).
8. You tendered the shipment to Delta, but you did not include the packing group in Roman numerals as prescribed for the material in column 5 of the Table (49 CFR §172.101).
9. You offered a package containing a hazardous material to Delta for transportation aboard a passenger-carrying aircraft, that the DOT HMR prohibits to be transported aboard passenger-carrying aircraft, and you failed to include the words "Cargo aircraft only" in a basic description of the materials.
10. You offered the above shipment and failed to certify that the material is offered for transportation in accordance with the Hazardous Materials Regulations by printing on the shipping paper containing the required shipping description the certification contained in §172.204(a)(1) or the certification containing the language contained in §172.204(a)(2).
11. You offered the above hazardous material shipment for transportation by air, but you did not mark each package, freight container, and transport vehicle containing the hazardous material in the manner required by the DOT HMR.
12. You offered the above hazardous materials shipment for transportation by air, but you did not label the package or containment device with labels specified for the material in § 172.101 of the DOT HMR Table.
13. You offered the above hazardous materials shipment for transportation by air but you did not provide 1) Emergency response information conforming to

the DOT HMR and made immediately available for use at all times the hazardous material is present; and (2) Emergency response information, including the emergency response telephone number, required by the DOT HMR and made immediately available to any person who, as a representative of a Federal, State or local government agency, responds to an incident involving a hazardous material, or is conducting an investigation which involves a hazardous material.

14. Thus you offered the above hazardous materials shipment for transportation by air, when you did not: (1) class and describe the hazardous material in accordance with parts 172 and 163 of the DOT HMR, and (2) you did not determine that the packaging or container was authorized packaging, including DOT HMR part 173 requirements, and that it has been manufactured, assembled, and marked in accordance with: (i) §173.(7)(a) and parts 173, 178, or 179 of DOT HMR.
15. Thus, you offered a shipment of hazardous materials that was not prepared in accordance with the DOT Hazardous Materials Regulations for transportation by air.

### III

By reason of the foregoing facts and circumstances, Respondent violated the following section(s) of the Department of Transportation Hazardous Materials Regulations:

- a. Section 171.2(b), which states that each person who offers a hazardous material for transportation in commerce must comply with all applicable requirements of this subchapter, or an exemption, or special permit, approval, or registration issued under this subchapter or under subchapter A of this chapter. There may be more than one offeror of a shipment of hazardous materials. Each offeror is responsible for complying with the requirements of this subchapter, or an exemption, or special permit, approval, or registration

issued under this subchapter or subchapter A of this chapter, with respect to any pre-transportation function that it performs or is required to perform; however, each offeror is responsible only for the specific pre-transportation functions that it performs or is required to perform, and each offeror may rely on information provided by another offeror, unless that offeror knows or, a reasonable person, acting in the circumstances and exercising reasonable care, would have knowledge that the information provided by the other offeror is incorrect.

- b. Section 172.200(a), which states that, except as otherwise provided in this subpart, each person who offers a hazardous material for transportation shall describe the hazardous material on the shipping paper in the manner required by this subpart.
- c. Section 172.202(a)(1), which states that the shipping description of a hazardous material on the shipping paper must include the identification number prescribed for the material as shown in Column (4) of the §172.101 table.
- d. Section 172.202(a)(3), which states that the shipping description of a hazardous material on the shipping paper must include the hazard class or division number prescribed for the material, as shown in Column (3) of the §172.101 table. Except for combustible liquids, the subsidiary hazard

class(es) or subsidiary division number(s) must be entered in parentheses immediately following the primary hazard class or division number. In addition-- (i) The words "Class" or "Division" may be included preceding the primary and subsidiary hazard class or division numbers. (ii) The hazard class need not be included for the entry "Combustible liquid, n.o.s." (iii) For domestic shipments, primary and subsidiary hazard class or division names may be entered following the numerical hazard class or division, or following the basic description.

- e. Section 172.202(a)(4), which states that the shipping description of a hazardous material on the shipping paper must include the packing group in Roman numerals, as designated for the hazardous material in Column (5) of the §172.101 table. Class 1 (explosives) materials, self-reactive substances, organic peroxides and entries that are not assigned a packing group are excepted from this requirement. The packing group may be preceded by the letters "PG" (for example, "PG II").
- f. Section 172.203(f), which states that when a package containing a hazardous material is offered for transportation by air and this subchapter prohibits its transportation aboard passenger-carrying aircraft, the words "Cargo aircraft only" must be entered after the basic description.



- g. Section 172.204(a), which states that, except as provided in paragraphs (b) and (c) of this section, each person who offers a hazardous material for transportation shall certify that the material is offered for transportation in accordance with this subchapter by printing (manually or mechanically) on the shipping paper containing the required shipping description the certification contained in paragraph (a)(1) of this section or the certification (declaration) containing the language contained in paragraph (a)(2) of this section.
- h. Section 172.300(a), which states that each person who offers a hazardous material for transportation shall mark each package, freight container, and transport vehicle containing the hazardous material in the manner required by this subpart.
- i. Section 172.304(a)(1), which states that the marking required in this subpart must be durable, in English and printed on or affixed to the surface of a package or on a label, tag or sign.
- j. Section 172.313(a), which states that for materials poisonous by inhalation (see §171.8 of this subchapter), the package shall be marked "Inhalation Hazard" in association with the required labels or placards, as appropriate, or shipping name, when required. (See §172.302(b) of this subpart for size of

markings on bulk packages.) Bulk packagings must be marked on two opposing sides.

- k. Section 172.316(a), which states that each non-bulk packaging containing a material classed as ORM-D must be marked on at least one side or end with the ORM-D designation immediately following or below the proper shipping name of the material. The ORM-D designation must be placed within a rectangle that is approximately 6.3 mm (0.25 inches) larger on each side than the designation.
- l. Section 172.400(a), which states that except as specified in §172.400a, each person who offers for transportation or transports a hazardous material in any of the following packages or containment devices, shall label the package or containment device with labels specified for the material in the §172.101 Table and in this subpart. (1) A non-bulk package; (2) A bulk packaging, other than a cargo tank, portable tank, or tank car, with a volumetric capacity of less than 18 m<sup>3</sup> (640 cubic feet), unless placarded in accordance with subpart F of this part; (3) A portable tank of less than 3785 L (1000 gallons) capacity, unless placarded in accordance with subpart F of this part; (4) A DOT Specification 106 or 110 multi-unit tank car tank, unless placarded in accordance with subpart F of this part; and (5) An overpack, freight container or unit load device, of less than 18 m<sup>3</sup> (640 cubic feet), which

contains a package for which labels are required, unless placarded or marked in accordance with §172.512 of this part.

- m. Section 172.600(c), which states that no person to whom this subpart applies may offer for transportation, accept for transportation, transfer, store or otherwise handle during transportation a hazardous material unless: (1) Emergency response information conforming to this subpart is immediately available for use at all times the hazardous material is present; and (2) Emergency response information, including the emergency response telephone number, required by this subpart is immediately available to any person who, as a representative of a Federal, State or local government agency, responds to an incident involving a hazardous material, or is conducting an investigation which involves a hazardous material.
- n. Section 173.1(h), which states that a shipment of hazardous materials that is not prepared in accordance with this subchapter may not be offered for transportation by air, highway, rail, or water. It is the responsibility of each hazmat employer subject to the requirements of this subchapter to ensure that each hazmat employee is trained in accordance with the requirements prescribed in this subchapter. It is the duty of each person who offers hazardous materials for transportation to instruct each of his officers, agents,

and employees having any responsibility for preparing hazardous materials for shipment as to applicable regulations in this subchapter.

- o. Section 173.22(a)(1)&(2), which states that, except as otherwise provided in this part, a person may offer a hazardous material for transportation in a packaging or container required by this part only in accordance with the following: (1) The person shall class and describe the hazardous material in accordance with parts 172 and 163 of this subchapter, and (2) The person shall determine that the packaging or container is an authorized packaging, including part 173 requirements, and that it has been manufactured, assembled, and marked in accordance with: (i) §173.7(a) and parts 173, 178, or 179 of this subchapter; (ii) A specification of the Department in effect at the date of manufacture of the packaging and container; (iii) National or international regulations based on the UN Recommendations on the Transport of Dangerous Goods, as authorized in §173.24(d)(2); (iv) An approval issued under this subchapter; or (v) An exemption or special permit issued under subchapter A of this chapter.

#### IV

1. Pursuant to 49 U.S.C. §5123, Respondent is subject to a civil penalty of at least \$250 but not more than \$32,500 for each of the violations alleged.

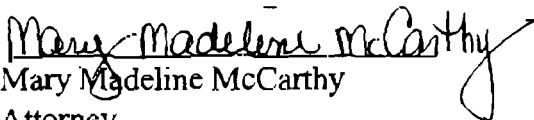
2. Under the facts and circumstances of this case, a civil penalty of \$2700 is appropriate.

WHEREFORE, the FAA, by counsel, respectfully requests that the Administrative Law Judge enter an order that Respondent be assessed a civil penalty in the amount of \$2700.

Respectfully submitted,

Alfred R. Johnson, Jr.  
Regional Counsel

By:

  
Mary Madeline McCarthy  
Attorney

Federal Aviation Administration  
1 Aviation Plaza  
Jamaica, NY 11434  
718 553-3267  
(718) 995-5699

**NOTE:**

**The Rules of Practice for this proceeding are set forth in Part 13, Subpart G, of the Federal Aviation Regulations (14 C.F.R. Part 13).**

**The Rules of Practice provide that Respondent must file a written answer to this Complaint, or a written Motion to Dismiss if appropriate, not later than 30 days after the date shown on the Certificate of Service. A general denial is deemed a failure to file an answer (Section 13.209(e)).**

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Complaint has been placed this date in the United States mail, postage prepaid, by Certified Mail - Return Receipt Requested addressed as follows:

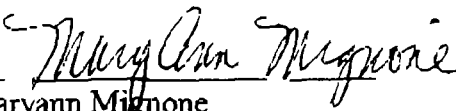
Brian Fronimos  
18104 Calico Ave.  
Nampa, ID 83689

Federal Aviation Administration (Original and one copy)  
800 Independence Avenue, S.W.  
Washington, D.C. 20591  
Attn: Hearing Docket Clerk, AGC-430  
Wilbur Wright Building - Room 2014

~IF FILING BY FEDERAL EXPRESS

Federal Aviation Administration (Original and one copy)  
600 Independence Avenue, SW  
Wilbur Wright Building - Room 2014  
Washington, DC 20591  
Attn: Hearing Docket Clerk, AGC-430

Date: JAN 14 2009

  
Maryann Mignone  
Legal Technician  
Federal Aviation Administration  
Office of Regional Counsel  
1 Aviation Plaza  
Jamaica, NY 11434